

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

PHILIP A. KENNER, *et al.*,

Defendants.

No. 13-cr-0607 (JFB)

**[PROPOSED] ORDER GRANTING
DANSKE BANK A/S LONDON
BRANCH'S MOTION FOR SUMMARY
JUDGMENT AND DENYING THE
GOVERNMENT'S COUNTER MOTION
FOR SUMMARY JUDGMENT**

This matter is before the Court on Danske Bank A/S London Branch's ("Danske") Motion for Summary Judgment (the "Motion") and the government's Cross-Motion for Summary Judgement (the "Cross-Motion"). The Court, having considered all of the voluminous papers submitted in support of and in opposition to the Motion and Cross-Motion, the arguments of the parties, including relevant interested third parties, as well as all prior proceedings, and after due deliberation and for the reasons set forth on the record on November 23, 2020,

NOW, THEREFORE, HEREBY ORDERS THAT:

1. Danske's motion for summary judgment is **granted** subject to two limited issues raised below and the government's Cross-Motion is **denied**;
2. Danske is a bona fide purchaser for value under 21 U.S.C. §853(n)(6)(B) as to its claim and as such, holds an interest in the Resort Property and Equity Interests that is superior to any interest acquired by the government;
3. As a bona fide purchaser for value, Danske and any of its successors and assigns holds an interest superior to any interest asserted by the government and any other claimant;
4. Danske's claim is recognized in an amount of no less than the following:

Specific Claim (with submitted claim amount)	Amount Of Danske's Claim Recognized by the Court's 11/23/2020 Oral Ruling
Facility A (\$96.4 million)	\$90,102,594.00
Facility B (\$18 million)	\$18,000,000.00
Facility C (\$14.1 million)	\$5,234,184.84
PPF (\$50 million)	\$45,000,000.00
Unpaid Interest (as of November 30, 2020, approx. \$35 million)	\$30,057,459.81
TOTAL (\$213.5 million)	\$188,394,238.65

5. Danske's Motion is **granted** except with regard to the following two issues as to which the Court is allowing limited discovery:
 - a. Whether Danske can support \$6,297,406 of the initial \$107 million lien Danske purchased from Lehman Brothers; and
 - b. Whether Danske is a bona fide purchaser as to the \$8.8 million advanced after the second bill of particulars was filed on August 22, 2015 because these funds were advanced as part of an arms-length transaction.
6. Finding no just reason for delay, under Federal Rule of Criminal Procedure 32.2, the determination as to Danske's claim as reflected above is a final judgment and appealable upon entry of this Order.

ORDERED this ____ day of _____, 2020.

Honorable Joseph F. Bianco
Visiting Circuit Judge (sitting by designation in the above captioned matter)